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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOSE LANDA-RODRIGUEZ, et al., [#2-GABRIEL ZENDEJAS-CHAVEZ] Defendants.	No. 2:18-CR-00173(A)-GW-2 GOVERNMENT'S TRIAL MEMORANDUM Trial Date: August 2, 2022 Trial Time: 8:30 a.m. Location: Courtroom of the Honorable George H. Wu

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorneys Shawn J. Nelson, Gregory Bernstein, Keith D. Ellison, and Gregg E. Marmaro, hereby files its Trial Memorandum.

This Trial Memorandum is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: July 27, 2022,

Respectfully submitted,

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/s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATUS OF THE CASE

A. Procedural Background

The original indictment charged defendant and sixty-nine other defendants with racketeering- and drug-related crimes related to their participation in the Mexican Mafia enterprise that controlled the Los Angeles County jail system. That indictment was unsealed, and defendant was arrested on, May 23, 2018. A First Superseding Indictment returned on March 31, 2022, charged defendant and eighteen other remaining defendants with essentially the same charges.[1]

Defendant is charged with conspiring to participate in the activities of a racketeering enterprise in violation of 18 U.S.C. § 1962(d) (Count One), conspiracy to distribute controlled substances in violation of 21 U.S.C. § 846 (Count Five), aiding and abetting the distribution of at least five grams of methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii) (Count Seven), and aiding and abetting the distribution of heroin in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C).[2] Defendant has pleaded not guilty and trial is set for August 2, 2022.

B. Trial Matters

1. Trial Estimate

In the absence of stipulations, the government estimates that the government's case-in-chief, including cross-examination will last about three weeks. As set forth in the government's witness list

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[1] The superseding indictment made a factual correction related to another defendant and "cleaned out" the defendants who have pled guilty.

[2] The elements of these charges and the specific allegations in the indictment are further discussed in Section II, below.

(docket no. 3623) the government currently plans to call about twenty-five witnesses. The government provided its draft witness and exhibit lists to defendant on about July 21, 2022, and filed its preliminary witness list (docket no. 3623) and exhibit list (docket no. 3620) on July 24, 2022.

Defendant has not provided an estimate for any defense case but has submitted a defense witness list (docket no. 3630) of about twenty-five witnesses.

2. Expert Notice

On September 17, 2019, the government provided notice of several expert witnesses expected to testify in its case-in-chief, including (1) FBI Special Agent Joseph Talamantez, (2) LASD Deputy Sheriff and FBI Task Force Officer Devon Self, (3) DEA Forensic Chemist Trevor Equitz, (4) DEA Forensic Chemist Annecia Martin, (5) LASD Forensic Chemist Celeste Trujillo, and (6) LASD Forensic Chemist Aaron Lewis.

As further explained in the Government's Motion in limine No. 3 to Compel Supplemental Expert Disclosures or Exclude Testimony (docket no. 3638) defendant has stated her intent to call at least three expert witnesses but has not provided the notice required by Federal Rule of criminal Procedure 16(b)(1)(C).

3. Stipulations

On July 20, 2022, the Government proposed fifteen stipulations that covered mundane, seemingly uncontested matters such as the authentication of about sixteen recorded jail calls, a chart summarizing the records of defendant's visits to various jails and prisons, authentication of jail video recordings, the recovery of "kites" and other evidence from within LACJ, the recovery and testing of drugs seized from other defendants, photographs of "kites"

recovered from LACJ, photographs of drugs recovered from other defendants, and the foundation for intercepted wire calls. On July 23, 2022, defendant told the government he would not be entering into any stipulations. The government estimates that his will require about twelve additional witnesses. Defendant has not proposed any stipulations.

4. Witness/Jenks Statements

The government has been providing witness statements from around the time of the takedown. In anticipation of trial, the government has disclosed what it believes to be the Jenks statements of its witnesses, including grand jury transcripts. The government is aware of its ongoing duty to produce newly created Jenks material.

As more fully described in the Government's Motion in limine No. 3 to Compel Supplemental Expert Disclosures or Exclude Testimony (docket no. 3638) defendant has stated her intent to call at least three expert witnesses but has not provided the notice required by Federal Rule of criminal Procedure 16(b)(1)(C). Defendant has also produced about nine reports of investigation of what appear to be non-percipient character witnesses that are likely to be duplicative.

5. Trial Filings

The government sent proposed jury instructions and verdict forms to defendant on June 23, 2022.[3] Defendant replied on July 24, 2022. The government filed its proposed jury instructions (docket no. 3621) and verdict form (docket no. 3622) on July 24, 2022.

The government proposed a joint statement of the case on July 23, 2022. Following defendant's reply on July 24, 2022, the

[3] The government a single, minor modifications on July 24, 2022.

government (docket no. 3627) and defendant (docket no. 3631) filed their own statements of the case. As described above, the government has filed a preliminary exhibit list and a preliminary witness list. Defendant has filed a preliminary witness list. The government will provide final witness and exhibit lists to the Courtroom Deputy on the morning of trial

6. Motions in Limine

The government initially filed two motions in limine.[4] The first (docket no. 3624) seeks to keep the cross examination of the Government's cooperating witnesses within the bounds of Rules 404, 608, and 609. The second (docket no. 3625) seeks to exclude Defendant's proffered duress defense.

Defendant filed three similar motions in limine, a motion "to Preclude Specific Evidence" (docket no. 3628), a motion "to exclude statements that do not meet the requirements of FRE 801(d)(2)(E)" (docket no. 3632), and a motion "to Preclude use of Certain Kites" (docket no. 3633). The Government will file a single opposition to these related motions.

Defendant also filed a motion "to Compel Brady and Henthorn Information" (docket no. 3629). The Government will be responding to this motion, believes it has complied with its Brady and Henthorn obligations, is aware of its ongoing Brady and Henthorn obligations, and, if Defendant is aware of a specific piece of Brady or Henthorn evidence that has not been produced, the Government requests

[4] As described in Section 2, above, following Defendant's inadequate Rule 16 expert disclosures, the Government has filed a third motion in limine to exclude the expert testimony.

Defendant explain what that is so that the Government can investigate.

7. Presentation of Evidence

The government intends to use the Trial Director software program in order to display evidence via the in-Court monitors. Such evidence will include photographs, video, and audio recordings. The government has prepared transcripts for most of its audio exhibits. The transcripts will be displayed on the monitors synced with the playing audio. The transcripts will also be authenticated by a competent government witness.

8. Defenses

Defendant has given notice of a duress defense and an entrapment defense. The Government has moved to preclude the duress defense as defendant cannot establish a prima facie case. Similarly, an entrapment defense should be excluded because defendant cannot establish a prima facie case.

II. ELEMENTS OF THE CHARGED OFFENSES

The elements of the crimes are set forth in the Government's Proposed Jury Instructions.

III. EVIDENTIARY AND LEGAL ISSUES

A. Recorded Statements

At trial, the government will offer a variety of written and recorded statements. The recorded oral statements will include those (i) made over the automated jail telephone recording system ("ITMS"), (ii) intercepted by Title III wiretaps, and (iii) captured in a consensually-recorded meeting between defendant and a cooperating witness. The government will also offer hundreds of written statements, primarily in the form of (i) "kites" (which are notes

smuggled by prisoners), (ii) correspondence disguised as legal mail, and (iii) notebooks containing ledgers and other notations.[5]

1. Authentication and Identification

The government expects to introduce audio and video recordings. Some of the recordings are lengthy, so the government has made clips of the most pertinent parts. Each recording has been produced to the defense and has been placed onto compact discs, which the government will offer as exhibits at trial.

The foundation that must be laid for the introduction into evidence of recorded conversations is a matter largely within the discretion of the trial court. There is no rigid set of foundational requirements. Rather, the Ninth Circuit has held that recordings are sufficiently authenticated under Federal Rule of Evidence 901(a) if sufficient proof has been introduced "so that a reasonable juror could find in favor of authenticity or identification," which can be done by "proving a connection between the evidence and the party against whom the evidence is admitted" and can be done by both direct and circumstantial evidence. United States v. Matta-Ballesteros, 71 F.3d 754, 768 (9th Cir. 1995), modified by 98 F.3d 1100 (9th Cir. 1996).

A recording is admissible upon a showing that it is "accurate, authentic, and generally trustworthy." United States v. King, 587 F.2d 956, 961 (9th Cir. 1978). For example, testimony that a recording depicts evidence that the witness observed or is familiar with from personal observations is sufficient to authenticate the recording. Fed. R. Evid. 901(b); United States v. Torres, 908 F.2d

[5] The government will also introduce text messages as discussed below.

1417, 1425 (9th Cir. 1990) ("Testimony of voice recognition constitutes sufficient authentication."). Recognition of a speaker's voice is one way in which such authentication may occur, Fed. R. Evid. 901(b)(5), along with indicia in the calls themselves, such as the speakers' use of one another's name. "The bar for familiarity is not a high one. This court has held that hearing a defendant's voice once during a court proceeding satisfies the minimal familiarity requirement." United States v. Mendiola, 707 F.3d 735, 740 (7th Cir. 2013).

"Rule 901(b)(5) establishes a low threshold for voice identifications -- an identifying witness need only be minimally familiar with the voice he identifies." United States v. Ortiz, 776 F.3d 1042, 1044-45 (9th Cir. 2015) (internal quotation marks omitted). "Once the offering party meets this burden, the probative value of the evidence is a matter for the jury." Id. (internal quotation marks omitted). Witnesses may testify competently as to the identification of a voice on a recording. A witness's opinion testimony in this regard may be based upon his having heard the voice on another occasion under circumstances connecting it with the alleged speaker. Fed. R. Evid. 901(b)(5); United States v. Torres, 908 F.2d 1417, 1425 (9th Cir. 1990) ("Testimony of voice recognition constitutes sufficient authentication."). In this case, the government expects that SA Talamantez will authenticate the voices heard and persons seen on the some of recordings because he has direct personal knowledge of the persons on the recordings, and thus can identify both the visual person and the audio.

Recorded conversations are competent evidence even when they are partly inaudible, unless the unintelligible portions are so

substantial as to render the recording as a whole untrustworthy. United States v. Rrapi, 175 F.3d 742, 746 (9th Cir. 1999). Here, for each recording at least one witness (many times multiple witnesses) have reviewed and authenticated the audio.

2. Transcripts of Recorded Statements

Due to the nature of the case and the evidence that the government intends to introduce at trial, including jail calls, intercepted wiretap calls, and kites, the government believes that transcripts would serve as an aid to the jury while listening and looking at these various recordings. See United States v. Turner, 528 F.2d 143, 167-68 (9th Cir.1975), *cert. denied,* 429 U.S. 837, 97 S.Ct. 105, 50 L.Ed.2d 103 (1976); United States v. Taghipour, 964 F.2d 908, 910 (9th Cir. 1992); United States v. Fuentes-Montiji, 68 F.3d 352, 354-55 (9th Cir. 1995). In particular, the government intends to introduce hundreds of kites at trial, and because many of the kites are written on small pieces of paper and contain small handwriting or otherwise can be difficult to read, the government believes that transcripts would serve as an aid to the jury while reading the kites.

The government also intends to introduce audio recordings from jail calls (including some involving the defendant) and a recorded meeting between the defendant and a cooperating witness. For the recordings that are entirely in English, or where there is a de minimis use of the Spanish language (such as greetings or salutations), the recording is the evidence, not the transcript. See Ninth Cir. Crim. Model Jury Instr. No. 2.6 (Transcript of Recording in English).

Some of the recordings, however, contain both the English and Spanish languages. For such recordings, the transcripts contain italicized portions of the conversations or writings that were translated from Spanish to English. For those italicized, Spanish portions, the transcript is the evidence, not the foreign language spoken or written in the recording. See Ninth Cir. Crim. Model Jury Instr. No. 2.7 (Transcript of Recording in Foreign Language). Where there is no dispute as to the accuracy of the transcription, the district court is well within its discretion to allow jurors to use such transcripts and to permit such exhibits into the jury room. United States v. Pena-Espinoza, 47 F.3d 356, 359 (9th Cir. 1995); see Fuentes-Montijo, 68 F.3d at 355 ("Where, as here, a district court is faced with a jury that includes one or more bilingual jurors and the taped conversations are in a language other than English, restrictions on the jurors who are conversant with the foreign tongue is not only appropriate, it may in fact be essential.").

B. Case Agent's Lay Testimony Will Aid the Jury's Understanding of the Certain Evidence

The government may seek to elicit lay testimony from the lead case agent, FBI Special Agent Joseph Talamantez, regarding the meaning of certain intercepted statements, based on his knowledge of the investigation. Lay opinion testimony is admissible if it is (1) "rationally based on the perception of the witness," (2) "helpful to a clear understanding of the witness's testimony or the determination of a fact in issue[,]" and (3) "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R. Evid. 701. In United States v. Gadson, the Ninth Circuit has made clear that such testimony, where based on

the law enforcement witnesses' personal observations and direct knowledge of the investigation, falls under FRE 701 and does not qualify as expert testimony governed by FRE 702.

> In applying Rule 701 to the lay opinion testimony of law enforcement officers, we have held that an officer's interpretation of intercepted phone calls may meet Rule 701's "perception" requirement when it is an interpretation "of ambiguous conversations based upon [the officer's] direct knowledge of the investigation." United States v. Freeman, 498 F.3d 893, 904-05 (9th Cir. 2007); see also United States v. Simas, 937 F.2d 459, 464-65 (9th Cir. 1991) (finding no abuse of discretion in admitting officers' lay testimony "concerning their understanding of what [defendant] meant to convey by his vague and ambiguous statements").

763 F.3d 1189, 1206 (9th Cir. 2014).[6]

The Court went on:

> In Kevin Freeman, for instance, we held that once the government established a foundation, a police officer could provide lay witness opinion testimony regarding the meaning of statements in the defendant's intercepted phone calls because the testimony was based on the officer's "direct perception of several hours of intercepted conversations—in some instances coupled with direct observation of [the defendants]—and other facts he learned during the investigation." 498 F.3d at 904-05; see also United States v. El-Mezain, 664 F.3d 467, 513-14 (5th Cir. 2011) (allowing lay opinion testimony interpreting telephone calls when "the agents' opinions were limited to their personal perceptions from their investigation of this case"); United States v. Rollins, 544 F.3d 820, 830-33 (7th Cir. 2008) (finding no error in the district court's decision to allow the agent's testimony regarding his "impressions" of recorded conversations when the testimony was "based on the agent's perceptions derived from the investigation of this particular conspiracy").

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[6] The majority of the circuits allow officers to provide interpretations of recorded conversations based on their knowledge of the investigation, subject to various safeguards. See United States v. Albertelli, 687 F.3d 439, 444-48 (1st Cir. 2012); United States v. El-Mezain, 664 F.3d 467, 513-14 (5th Cir. 2011); United States v. Jayyousi, 657 F.3d 1085, 1102-03 (11th Cir. 2011); United States v. Rollins, 544 F.3d 820, 830-33 (7th Cir. 2008); United States v. Garcia, 994 F.2d 1499, 1506-07 (10th Cir. 1993); United States v. De Peri, 778 F.2d 963, 977-78 (3d Cir. 1985).

Id at 1207-08.

Such testimony is admissible even if the testifying officer was not a participant in the recorded conversation. Kevin Freeman, 498 F.3d at 904; see also United States v. Jayyousi, 657 F.3d 1085, 1102 (11th Cir. 2011) (holding that a lay witness's testimony was admissible even though "he did not personally observe or participate in the defendants' conversations").

The reason such law enforcement testimony is regularly admitted in criminal trials is because it serves an important jury function.

> Lay witness testimony regarding the meaning of ambiguous conversations based on the witness's direct perceptions and experience may also prove "helpful to the jury" for purposes of Rule 701. See Kevin Freeman, 498 F.3d at 904-05 (agent's "understanding of ambiguous phrases" based on the "direct perception of several hours of intercepted conversations" along with "direct observation" of defendants and "other facts he learned during the investigation" resulted in testimony that "proved helpful to the jury in determining what the [co-conspirators] were communicating during the recorded telephone calls"); see also Rollins, 544 F.3d at 832-33 (agent's testimony based on listening to every intercepted conversation, and other "personal observations and perceptions" related to the specific case at issue "assisted the jury in determining several facts in issue").

Gadson, 763 F.3d at 1207.

Here, SA Talamantez personally participated in basically every significant investigative step in this case, which included listening to essentially every recording, reading every kite, and being physically present at almost every significant event. As such, the Circuit well supports their testimony whereby they will employ their significant knowledge of the case to help the jury navigate and

interpret the sometimes complex, concealed, or just chaotic recorded written or oral statements in this case.[7]

C. Relevant Conspiracy Law

1. General Principles

"The agreement need not be explicit; it may be inferred from the defendant's acts pursuant to a fraudulent scheme or from other circumstantial evidence." United States v. Cloud, 872 F.2d 846, 852 (9th Cir. 1989). The government need not prove direct contact between co-conspirators or the existence of a formal agreement; instead, an agreement constituting a conspiracy may be inferred from the acts of the parties and other circumstantial evidence indicating concert of action for the accomplishment of a common purpose. See United States v. Garza, 980 F.2d 546, 552-53 (9th Cir. 1992). Moreover, "[w]ithin reasonable limits, the precise date of the [conspiracy] offense is not required." United States v. Hultgren, 713 F.2d 79, 89 (5th Cir. 1983).

It is not necessary for the government to show that the defendant knew "the exact scope of the conspiracy, the identity and role of each of the co-conspirators, or the details of the operations

[7] Courts have admitted opinion testimony by law enforcement agents on a number of other issues too, such as (1) the modus operandi of drug traffickers, United States v. Espinosa, 827 F.2d 604, 612 (9th Cir. 1987) (holding that district court properly admitted law enforcement officer's expert testimony expert on the modus operandi of narcotics traffickers, including use of "stash pads" for drugs); (2) the use of guns by drug traffickers, United States v. Perez, 116 F.3d 840, 848 (9th Cir. 1997); and (3) a defendant's apparent attempt to avoid surveillance, United States v. Andersson, 813 F.2d 1450, 1458 (9th Cir. 1987). An experienced narcotics agent's opinion testimony may be based in part on information from other agents familiar with the issue. United States v. Beltran-Rios, 878 F.2d 1208, 1213 n.3 (9th Cir. 1989).

or any particular plan." United States v. Thomas, 586 F.2d 123, 132 (9th Cir. 1978). However, the government must prove that the defendant was aware of "the essential nature of the plan." Blumenthal v. United States, 332 U.S. 539, 557 (1947). See also United States v. Krasovich, 819 F.2d 253, 255-56 (9th Cir. 1987). The key element of proof as to any specific co-conspirator is the showing that he knew, or had reason to know, of the participation of others in the illegal plan, and that he knew, or had reason to know, that the benefits to be derived from the operation were probably dependent upon the success of the entire venture. United States v. Abushi, 682 F.2d 1289, 1293 (9th Cir. 1982). Once a conspiracy is proven, evidence establishing beyond a reasonable doubt the defendant's connection to that conspiracy -- even if the connection is slight -- is sufficient to convict him of knowingly participating in the conspiracy. United States v. Hubbard, 96 F.3d 1223, 1227 (9th Cir. 1996).

Once a person becomes a member of a conspiracy, that person remains a member until that person withdraws from it. (9th Cir. MJI 8.24.) "[E]stablishing individual withdrawal [is] a burden that rest[s] firmly on the defendant regardless of when the purported withdrawal took place." Smith v. United States, 133 S. Ct. 714, 719 (2013). A conspirator can continue to be held accountable for acts of conspirators after he has been arrested unless he has withdrawn. United States v. Hill, 42 F.3d 914, 917 (5th Cir. 1995). Additionally, there is no "automatic termination" rule simply because the government has defeated the conspiracy's objective. See, e.g., United States v. Jimenez Recio, 537 U.S. 270, 275 (2003). Finally, because the crime of conspiracy is complete upon entering into an

unlawful agreement, despite the absence of an overt act, the government does not have the burden to disprove a defendant's withdrawal from the conspiracy. United States v. Francis, 916 F.2d 464, 466 (8th Cir. 1990). "Passive nonparticipation in the continuing scheme is not enough to sever the meeting of the minds that constitutes the conspiracy." Smith, 133 S. Ct. at 719.

2. Racketeering Conspiracy

The charge of racketeering conspiracy requires proof of criminal activity by members of the LACJ Enterprise to show the enterprise's nature and the requisite pattern of racketeering activity. See Salinas v. United States, 522 U.S. 52, 63-64 (1997) ("The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other . . . . If [the RICO] conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.") (internal citation omitted); c.f. United States v. DiNome, 954 F.2d 839, 843 (2d Cir. 1992) ("Proof of [RICO] elements may well entail evidence of numerous criminal acts by a variety of persons, and each defendant in a RICO case may reasonably claim no direct participation in some of those acts. Nevertheless, evidence of those acts is relevant to the RICO charges against each defendant[.]"). The Supreme Court has also made clear that, for RICO conspiracies, "[a] conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense." Id. at 63. All that is required is that the defendant "knew about and agreed to facilitate the scheme." Id. at 66.

D. Co-Conspirator Statements

Declarations by one co-conspirator during the course of and in furtherance of the conspiracy may be used against another conspirator because such declarations are not hearsay. See Fed. R. Evid. 801(d)(2)(E). Further, statements made in furtherance of a conspiracy were expressly held by the Supreme Court in Crawford v. Washington, 541 U.S. 36, 56 (2004) to be "not testimonial" such that their admission does not violate the Confrontation Clause. As such, the admission of co-conspirator statements pursuant to Fed. R. Evid. 801(d)(2)(E) requires only a foundation that: (1) the declaration was made during the life of the conspiracy; (2) it was made in furtherance of the conspiracy; and (3) there is, including the co-conspirator's declaration itself, sufficient proof of the existence of the conspiracy and of the defendant's connection to it. See Bourjaily v. United States, 483 U.S. 171, 173, 181 (1987).

The government must prove by a preponderance of the evidence that a statement is a co-conspirator declaration in order for the statement to be admissible under Rule 801(d)(2)(E). Bourjaily, 483 U.S. at 176; United States v. Crespo de Llano, 838 F.2d 1006, 1017 (9th Cir. 1987). Whether the government has met its burden is to be determined by the trial judge, and not the jury. United States v. Zavala-Serra, 853 F.2d 1512, 1514 (9th Cir. 1988). The Court may rely on inadmissible evidence, such as a co-conspirator's plea agreement, in determining whether the 801(d)(2)(E) exception applies. Cf. United States v. Gil, 58 F.3d 1414, 1420 (9th Cir. 1995) (the preliminary determination of whether FRE 801(d)(2)(E) applies is to be made "by the court, not the jury, pursuant to Fed. R. Evid. 104(a)); Fed. R. Evid. 104(a) ("the court must decide any preliminary

question about whether . . . evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege").

The trial court has discretion to determine whether the government may introduce co-conspirator declarations before establishing the conspiracy and the defendant's connection to it. United States v. Loya, 807 F.2d 1483, 1490 (9th Cir. 1987). It also has the discretion to vary the order of proof in admitting a co-conspirator's statement. Id. The court may allow the government to introduce co-conspirator declarations before laying the required foundation under the condition that the declarations will be stricken if the government fails ultimately to establish by independent evidence that the defendant was connected to the conspiracy. Id.; United States v. Spawr Optical Research, Inc., 685 F.2d 1076, 1083 (9th Cir. 1982).

To be admissible under Federal Rule of Evidence 801(d)(2)(E) as a statement made by a co-conspirator in furtherance of the conspiracy, a statement must "further the common objectives of the conspiracy," or "set in motion transactions that [are] an integral part of the [conspiracy]." United States v. Arambula-Ruiz, 987 F.2d 599, 607-08 (9th Cir. 1993); United States v. Yarbrough, 852 F.2d 1522, 1535 (9th Cir. 1988). Such statements are admissible whether or not they actually result in any benefit to the conspiracy. United States v. Williams, 989 F.2d 1061, 1068 (9th Cir. 1993); United States v. Schmit, 881 F.2d 608, 612 (9th Cir. 1989). Thus, co-conspirator declarations need not be made to a member of the conspiracy to be admissible under Rule 810(d)(2)(E) and can be made to government informants and undercover agents. Zavala-Serra, 853

F.2d at 1516 (statements to informants and undercover agents); United States v. Tille, 729 F.2d 615, 620 (9th Cir. 1984) (statements to informants); United States v. Echeverry, 759 F.2d 1451, 1457 (9th Cir. 1985) (statements to undercover agent). Declarations of an unindicted co-conspirator made in furtherance of the conspiracy may be used against a charged conspirator. See United States v. Nixon, 418 U.S. 683, 701 (1974); Williams, 989 F.2d at 1067.

Courts have interpreted the "in furtherance of" requirement broadly and have considered, among others, the following co-conspirator declarations as being made "in furtherance of the conspiracy":

1. statements made to induce enlistment in the conspiracy (United States v. Arias-Villanueva, 998 F.2d 1491, 1502 (9th Cir. 1993));

2. statements made to keep a conspirator abreast of a co-conspirator's activity, to induce continued participation in a conspiracy, or to allay the fears of a co-conspirator (Arias-Villanueva, 998 F.2d at 1502); see also United States v. Ammar, 714 F.2d 238, 252 (3d Cir. 1983) ("[s]tatements between conspirators which provide reassurance, serve to maintain trust and cohesiveness among them, or inform each other of the current status of the conspiracy further the ends of the conspiracy . . . ");

3. statements made to prompt action in furtherance of the conspiracy by either of the participants to the conversation (United States v. Layton, 720 F.2d 548, 556 (9th Cir. 1983));

4. statements related to the concealment of the criminal enterprise (Tille, 729 F.2d at 620); Garlington v. O'Leary, 879 F.2d 277, 283 (7th Cir. 1989));

5. statements seeking to control damage to an ongoing conspiracy (Garlington, 879 F.2d at 283);

6. statements made to reassure members of the conspiracy's continued existence (Yarbrough, 852 F.2d at 1535);

7. statements by a person involved in the conspiracy to induce a buyer's purchase of contraband by assuring the buyer of the person's ability to consummate the transaction (Echeverry, 759 F.2d at 1457);

8. statement identifying another co-conspirator as source for the contraband to be sold to purchaser (United States v. Lechuga, 888 F.2d 1472, 1480 (5th Cir. 1989));

9. "bragging," boasts and other conversation designed to obtain the confidence, or allay the suspicions, of another conspirator (or apparent conspirator who actually was an undercover agent) (United States v. Santiago, 837 F.2d 1545, 1549 (11th Cir. 1988); Lechuga, 888 F.2d at 1480; United States v. Miller, 664 F.2d 94, 98 (5th Cir. 1981)); and

10. statements that refer to another conspirator as the boss, the overseer, or sir (United States v. Barnes, 604 F.2d 121, 157 (2d Cir. 1979)).

E. Other Hearsay Exceptions

1. Past Recollection Recorded

Under Federal Rule of Evidence 803(5), a record may be read into evidence if it (1) is on a matter the witness once knew about but now cannot recall well enough to testify truthfully and accurately; (2) was made or adopted by the witness when the matter was fresh in the witness's memory; and (3) accurately reflects the witness's knowledge. Fed. R. Evid. 803(5).

2. Present Sense Impression

Under Federal Rule of Evidence 803(1), a statement "describing or explaining an event or condition, made while or immediately after the declarant perceived it," is admissible.

3. Defendants' Hearsay Statements

Defendant's statements are admissible only if offered against them -- otherwise, they fall within the scope of the rule against hearsay. Fed. R. Evid. 801(d)(2)(A); United States v. Fernandez, 839 F.2d 639, 640 (9th Cir. 1988). The hearsay rule prohibits a defendant from obtaining the benefit of testifying without subjecting himself to cross-examination by placing his self-serving prior statements before the jury through other witnesses. Fed. R. Evid. 801(c); Fernandez, 839 F.2d at 640; United States v. Waters, 627 F.3d 345, 385 (9th Cir. 2010) (holding that defendant's exculpatory statement proclaiming innocence "is clearly hearsay, and was therefore properly excluded under Rule 801(a)"); United States v. Ortega, 203 F.3d 675, 682 (9th Cir. 2000) (holding that district court did not commit error by prohibiting defendant from cross-examining government witness concerning false exculpatory statements made during the same interview in which defendant made inculpatory statements).

F. Business Records

At trial, the government anticipates offering several sets of business records into evidence, including jail calls and visitation records. Such records of "regularly conducted activity" fall within an exception to the rule against hearsay and are admissible either through "the testimony of the custodian or another qualified witness" or "by a certification that complies with Rule 902(11)." Fed. R.

Evid. 803(6)(D). In this case, after the defendant rejected the government's proposed stipulations, the government has chosen the latter option with respect to certain records. The government previously provided copies of those records in discovery to defense counsel and has or will provide the corresponding certifications by appropriately qualified custodians of records, thereby affording opposing counsel "a fair opportunity to challenge them." Fed. R. Evid. 902(11). To date, defendant has not raised any objection to the admission of any of these business records.

G. Charts and Summaries

The government will use charts and summaries in order to streamline its case-in-chief and provide an aid to the jury. Under FRE 1006, the Court may admit summaries into evidence where those summaries are based on voluminous, already-admitted exhibits. See, e.g. United States v. Anekwu, 695 F.3d 967 (9th Cir. 2012) (while noting that "we do not approve of receiving summary exhibits of material already in evidence, we have not reversed for that reason . . . [with limiting instructions and the opportunity to cross-examine the agent who prepared the summaries], we cannot conclude that the district court abused its discretion in admitting both the summary chart and underlying records into evidence") (internal citations and quotations omitted); see also United States v. Rizk, 660 F.3d 1125, 1130-31 (9th Cir. 2011) (finding that district court did not abuse discretion in admitting summary charts of admissible (though not admitted) material, since "Rule 1006 permits admission of summaries based on voluminous records that cannot readily be presented in evidence to a jury and comprehended"); see also United States v. Boulware, 470 F.3d 931, 936 (9th Cir. 2006) (upholding

district court's decision to admit summary chart of already-admitted evidence where district court "no doubt believed that it would be helpful to have the voluminous financial materials reduced to summary form").

The government will seek to admit a summary chart of the visitation records in this case, which documents the dates, locations, and names and monikers of the inmates defendant visited during his participation in the racketeering and drug trafficking conspiracies. Because there will be multiple individuals discussed and identified throughout trial, the government may request the use of individual charts for each juror or a large poster-board sized chart of referenced-participants in defendant's enterprise that the jury can see throughout the trial. See, e.g. United States v. Yeley-Davis, 632 F.3d 673, 685 (10th Cir. 2011) (approving use of "photo-arrays of the individuals alleged to be a part of the conspiracy"; district court's admission of chart was proper in part because court offered limiting instruction that the chart did not "prove any elements of the crimes charged").[8] The government believes that this exhibit will be particularly helpful for the jury during any testimony that implicates the co-conspirators, each of whom has their own true name, gang moniker, nicknames, and variations of each. In other words, such a face sheet will enable the jury (and the Court

[8] In late 2012, in United States v. Rafael Munoz-Gonzalez, et al., CR 10-567-AHM, the Honorable Judge Matz (retired), ordered the undersigned that the government develop and display such a chart and admit it as a Court exhibit at the start of the trial. Judge Matz directed the use of such a chart in order for the jury, the court, and the parties to better keep track of the testimony throughout the proceeding.

and the parties) to better follow the narrative of the testimony and the role of each person discussed.

The government believes that such a chart would significantly aid the jury and provide context for the case, and that it can be limited by an appropriate instruction at the time of its admission indicating that such a chart is evidence but is not, standing alone, conclusive of any element.

H. Photographs

The government intends to introduce dozens of photographs taken from the various meetings, search warrants, and seized items. Photographs are generally admissible as evidence under Rule 401. See United States v. Stearns, 550 F.2d 1167, 1171 (9th Cir. 1977) (photographs of crime scene admissible). Photographs should be admitted so long as they fairly and accurately represent the event or object in question. United States v. Oaxaca, 569 F.2d 518, 525 (9th Cir. 1978). Also, "[p]hotographs are admissible as substantive as well as illustrative evidence." United States v. May, 622 F.2d 1000, 1007 (9th Cir. 1980). Photographs may be authenticated by a witness who "identif[ies] the scene itself [in the photograph] and its coordinates in time and place." See Lucero v. Stewart, 892 F.2d 52, 55 (9th Cir. 1989) (internal quotation marks omitted).

The photograph is authenticated if the witness testifies that it is an accurate representation of facts of which the witness has personal knowledge, and "the witness who lays the authentication foundation need not be the photographer, nor need the witness know anything of the time, conditions, or mechanisms of the taking of the picture." 32 McCormick On Evid. § 215 (7th ed.); see also Fed. R. Evid. 1002 advisory committee's note. Thus, for example, it is

suitable for a witness to identify a photograph by the individuals depicted in it regardless of his knowledge of the particular circumstances under which the photograph was taken. "Under the Federal Rules, the witness identifying the item in a photograph need only establish that the photograph is an accurate portrayal of the item in question." People of Territory of Guam v. Ojeda, 758 F.2d 403, 408 (9th Cir. 1985). Indeed, "[a] photograph can be authenticated by someone other than the photographer if he recognizes and identifies the object depicted and testifies that the photograph fairly and correctly represents it." See United States v. Winters, 530 F. App'x 390, 395 (5th Cir. 2013) (citations/quotations omitted).

I. Physical Evidence

The will seek to introduce physical evidence recovered during the investigation, including drugs, kites, notebooks, cell phones, and weapons, as well as, as discussed above, recorded oral statements. Federal Rule of Evidence 901(a) provides that "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must provide evidence sufficient to support a finding that the item is what the proponent claims it is." Accordingly, under Rule 901, issues of authenticity and identification are treated as "a special aspect of relevancy." Fed. R. Evid. 901(a) (Advisory Committee Notes).

Rule 901(a) only requires the government to make a prima facie showing of authenticity or identification "so that a reasonable juror could find in favor of authenticity or identification." United States v. Chu Kong Yin, 935 F.2d 990, 996 (9th Cir. 1991) (quoting United States v. Blackwood, 878 F.2d 1200, 1202 (9th Cir. 1989) (per curiam)). The authenticity of proposed exhibits may be proven by

circumstantial evidence. See United States v. King, 472 F.2d 1, 9-11 (9th Cir. 1972). If the government makes a prima facie showing of authenticity, the Court should admit the evidence. See United States v. Black, 767 F.2d 1334, 1342 (9th Cir. 1985). The credibility or probative force of the evidence offered is ultimately an issue for the trier of fact. Chu Kong Yin, 935 F.2d at 996 (internal quotation marks omitted).

To be admitted into evidence, a physical exhibit must be in substantially the same condition as when the crime was committed. Fed. R. Evid. 901. The Court may admit the evidence if there is a "reasonable probability the article has not been changed in important respects." United States v. Harrington, 923 F.2d 1371, 1374 (9th Cir. 1991) (quoting Gallego v. United States, 276 F.2d 914, 917 (9th Cir. 1960)). This determination is to be made by the trial judge and will not be overturned except for clear abuse of discretion. Factors the Court may consider in making this determination include the nature of the item, the circumstances surrounding its preservation, and the likelihood of intermeddlers having tampered with it. Gallego, 276 F.2d at 917.

In establishing chain of custody as to an item of physical evidence, the government is not required to call all persons who may have come into contact with the piece of evidence. Harrington, 923 F.2d at 1374. Moreover, a presumption of regularity exists in the handling of exhibits by public officials. Id. Therefore, to the extent that alleged or actual gaps in the chain of custody exist, such gaps go to the weight of the evidence rather than to its admissibility. Id.

J. Electronic Records

The government intends to introduce electronic records, including data seized from digital devices. Like other evidence, electronic data can be authenticated in a variety of ways, including by a case agent with knowledge of the investigation. See United States v. Salcido, 506 F.3d 729, 733 (9th Cir. 2007) ("[T]he government properly authenticated the videos and images under Rule 901 by presenting detailed evidence as to the chain of custody, specifically how the images were retrieved from the defendant's computers"); United States v. Safavian, 435 F. Supp. 2d 36, 40 (D.D.C. 2006) (quoting Fed. R. Evid. 901(b)(4) (contents of email messages authenticated by its "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances"); United States v. Smith, 918 F.2d 1501, 1510 (11th Cir. 1990) ("[t]he government may authenticate a document solely through the use of circumstantial evidence, including the document' s own distinctive characteristics and the circumstances surrounding its discovery"); United States v. Siddiqui, 235 F.3d 1318, 1322-23 (11th Cir. 2000) (emails sufficiently authenticated by content and context by examining what was said in the messages as well as nicknames used within the messages). "The bar for authentication of evidence is not particularly high." See generally United States v. Gagliardi, 506 F.3d 140, 151 (2d Cir. 2007) (citation omitted).

K. Prison and Jail Records of Inmates

Prison and jail records identifying an inmate and documenting the bases and terms of incarceration (e.g., fingerprints, photographs, and records of a judgment and sentence contained in an

inmate's 'penitentiary packet') "are public records of routine and non-adversarial matters that fall within Rule 803(8)(B), and [are] admissible thereunder." See United States v. Weiland, 420 F.3d 1062, 1074-75 (9th Cir. 2005) (fingerprinting and photographing a suspect, and cataloguing a judgment and sentence are the types of routine and unambiguous matters to which the public records hearsay exception in Rule 803(8)(B) is designed to apply"); United States v. Orozco, 590 F.2d 789, 794 (9th Cir. 1979); United States v. Watson, 650 F.3d 1084, 1090-91 (8th Cir. 2011) (holding that "penitentiary records containing booking photos and fingerprint cards . . . were admissible as self-authenticating public records and admission did not violate the Confrontation Clause").

L. Use of Exhibits During Opening Statement

Exhibits may be used by the government in the opening statement, and so long as the opening statement "avoids references to matters that cannot be proved or would be inadmissible, there can be no error, much less prejudicial error." United States v. De Peri, 77826 F.2d 963, 979 (3d Cir. 1985); see also United States v. Rubino, 43127 F.2d 284, 290 (6th Cir. 1970).

In particular, the government currently believes it will likely use photographs of the relevant individuals, kites and other writings, screenshots of video recordings, and surveillance photos. The government intends to identify the photographs that it will use in its opening to the defense.

M. Cross-Examination of Defendant

A defendant who testifies at trial may be cross-examined as to all matters reasonably related to the issues he or she puts in dispute during direct examination. "A defendant has no right to

avoid cross-examination on matters which call into question his claim of innocence." United States v. Miranda-Uriarte, 649 F.2d 1345, 1353-54 (9th Cir. 1981). The government is not required to provide notice of matters about which it may seek to cross-examine defense witnesses, including defendant, should they testify.

N. Character Evidence

The Supreme Court long ago recognized that character evidence -- particularly cumulative character evidence -- has weak probative value and great potential to confuse the issues and prejudice the jury. See Michelson v. United States, 335 U.S. 469, 480, 486 (1948). The Court has thus given trial courts wide discretion to limit the presentation of character evidence. Id.

In addition, the form of the proffered evidence must be proper. Federal Rule of Evidence 405(a) sets forth the sole methods for which character evidence may be introduced. It specifically states that, where evidence of a character trait is admissible, proof may be made in two ways: (1) by testimony as to reputation and (2) by testimony as to opinion. Thus, a defendant may not introduce specific instances of his or her good conduct through the testimony of others. See Michelson, 335 U.S. at 477. On cross-examination of a defendant's character witness, however, the government may inquire into specific instances of a defendant's past conduct relevant to the character trait at issue. See Fed. R. Evid. 405(a). In particular, a defendant's character witnesses may be cross-examined about their knowledge of the defendant's past crimes, wrongful acts, and arrests. See Michelson, 335 U.S. at 481. The only prerequisite is that there must be a good faith basis that the incidents inquired about are

relevant to the character trait at issue. See United States v. McCollom, 664 F.2d 56, 58 (5th Cir. 1981).

O. Jury Nullification and Other Improper Defenses

To the extent defendant attempts to raise improper defenses, the Court should exclude any evidence or argument relating to any possible jury nullification defense. It is well-established that a defendant does not have a right to a jury nullification instruction. United States v. Powell, 955 F.2d 1206, 1213 (9th Cir. 1992). Having no right to seek jury nullification, defendant has no right to present evidence relevant only to such a defense. Zal v. Steppe, 968 F.2d 924, 930 (9th Cir. 1992) (Trott, J., concurring) ("[N]either a defendant nor his attorney has a right to present to a jury evidence that is irrelevant to a legal defense to, or an element of, the crime charged. Verdicts must be based on the law and the evidence, not on jury nullification as urged by either litigant."). And, in any event, under Federal Rules of Evidence 401 and 403, such arguments or evidence are not relevant to any valid defense to the offense charged and will unnecessarily confuse the issues and mislead the jury.

In particular, the defendant in this case should not be permitted to introduce evidence concerning his familial ties, any role he may have as a caregiver or financial provider for their family, religious affiliations, or difficult upbringings, since none is relevant to any material issue and their minimal probative value is substantially outweighed by the risk of unfair prejudice and confusion of the issues. See Fed. R. Evid. 401, 403.

P. Jury Questions

Under the law of this circuit, "[t]he necessity, extent and character of additional instructions are matters within the sound

discretion of the trial court." United States v. Collom, 614 F.2d 624, 631 (9th Cir. 1979) (citations omitted). However, the district court has an obligation, when a jury requests clarification on an issue, to "clear away the confusion 'with concrete accuracy.'" United States v. McCall, 592 F.2d 1066, 1068 (9th Cir. 1979) (quoting Bollenbach v. United States, 326 U.S. 607, 612-13 (1946). In some circumstances, this may require giving a supplementary jury instruction. United States v. McIver, 186 F.3d 1119, 1130 (9th Cir. 1999) ("By asking 'what is manufacturing?' the jury clearly indicated its confusion on this issue. The district court correctly decided that the jury instructions were inadequate without a definition of manufacturing. Rather than 'confusing the jury' by giving the instruction, as [defendants] contend, the district court judge was eliminating confusion, as required by McCall.")

Thus, the district court may provide specific answers to a jury's questions when the jury has "ma[de] explicit its difficulties [with the law]." United States v. Frega, 179 F.3d 793, 809 (9th Cir. 1999). Where the jury has shown such confusion, a general response that simply directs the jury to the court's instructions can be deemed confusing and misleading. Id. at 810. (district court committed error where it responded to a jury question by "telling the jury that it could consider 'all of the evidence that [it had] heard or seen during the trial . . . as to all counts'"). Thus, upon a showing of confusion the Court may direct jurors to specific jury instructions and/or may provide supplemental instructions, provided neither are incorrect statements of the law. McIver, 186 F.3d at 1131 (No plain error because "the supplemental instruction consisted of a correct statement of law. The court merely defined a term used

in the original charge to the jury, and the instruction was essential to clear up the jury's confusion.").

IV. THE CASE AGAINST DEFENDANT

The indictment describes how the Mexican Mafia controls jails and prisons throughout California and other states for the profit of its members. The indictment also describes how the Mexican Mafia leverages that control to also control Hispanic street gangs in southern California. The indictment also describes how the Los Angeles County jail is the largest, most profitable facility controlled by the Mexican Mafia and how the enterprise that controls the Los Angeles County jail plays a key role in furthering Mexican Mafia business.

At a higher level, the indictment describes that defendant "would act as [a] facilitator for [a] full member[] of the Mexican Mafia who was also a member of the Mexican Mafia LACJ Enterprise and would act with the authority of that Mexican Mafia LACJ Enterprise member in directing the criminal activities of the Mexican Mafia LACJ Enterprise, including extortion and the sale of controlled substances" and "would use his position as an attorney to assist defendant JOSE LANDA-RODRIGUEZ, and co-conspirators Luis Garcia and DMM-2, and other co-conspirators, with activities inside and outside the Los Angeles County Jail System." (First Superseding Indictment at p.19.)

Defendant played his role in that enterprise by furthering a series of events through the commission of the related overt acts and other acts. Specifically, the government will present evidence of defendant's participation in the following events and overt acts:

A. Defendant GABRIEL ZENDEJAS-CHAVEZ Hosts an Eme Meeting at his Law Office

Overt Act No. 178: On February 4, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ met with defendant RAFAEL LEMUS, co-conspirator Miguel Rodriguez, DMM-2, and others in defendant GABRIEL ZENDEJAS-CHAVEZ's law office to discuss Eme business, including the passing of messages to Eme members in California State Prison by defendant GABRIEL ZENDEJAS-CHAVEZ, the passing of messages to defendant JOSE LANDA-RODRIGUEZ, obtaining drugs for DMM-2 to have sold, and problems La Eme was having with A.E., an Eme member in bad standing, and his brother G.E.

B. Defendant GABRIEL ZENDEJAS-CHAVEZ Uses His Status as an Attorney to Meet With and Pass Messages to Mexican Mafia Members in Pelican Bay State Prison

Overt Act No. 180: On February 18, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to visit and pass messages to Mexican Mafia member 1, Mexican Mafia member 2, Mexican Mafia member 3, Mexican Mafia member 4, and Mexican Mafia member 5.

Overt Act No. 181: On February 18, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ attempted to smuggle a written message to a Mexican Mafia member at the Security Housing Unit at Pelican Bay State Prison.

Overt Act No. 182: On February 19, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to visit and pass messages to Mexican Mafia member 6, Mexican Mafia member 7, Mexican Mafia member 8, Mexican Mafia member 9, and Mexican Mafia member 10.

C. Defendant GABRIEL ZENDEJAS-CHAVEZ and UICC-38 Discuss Collecting and Laundering Mexican Mafia LACJ Enterprise Proceeds

Overt Act No. 183: On March 27, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ, via text-message, directed UICC-38 to bring kitty proceeds to his law office.

Overt Act No. 184: On April 9, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ, via text-message, directed UICC-38 to send him $1,000.

Overt Act No. 185: On April 9, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ, via text-message, agreed to deliver $300 to each of two Mexican Mafia members at the ADX Florence federal prison in Colorado.

Overt Act No. 186: On April 10, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ exchanged text messages with UICC-38 in which he agreed to deliver $400 to two persons in Colorado and to keep $200 for himself.

Overt Act No. 187: On April 12, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ travelled to the ADX Florence federal prison in Colorado to visit Mexican Mafia member 11.

Overt Act No. 188: On April 14, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ, via text-message, provided co-conspirator Donato Gonzales's name and booking number to UICC-38 so she could forward Mexican Mafia LACJ Enterprise proceeds to co-conspirator Donato Gonzales.

Overt Act No. 189: On April 18, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ told UICC-38 that he had money to return to her because one of the Mexican Mafia members in Colorado could not have visitors.

D. Defendant GABRIEL ZENDEJAS-CHAVEZ Facilitates the Extortion of the Mongols Outlaw Motorcycle Gang and the Intimidation of a Victim of a Jail Stabbing

Overt Act No. 190: On April 8, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to meet co-conspirator Luis Garcia and discuss Mexican Mafia business including the Mexican Mafia's extortion of the Mongols outlaw motorcycle gang and that they would be extorting the Mongols outlaw motorcycle gang for $100,000.

Overt Act No. 191: On April 8, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ agreed to travel to Pelican Bay State Prison on June 25, 2014, to get support for the extortion proposal from other Mexican Mafia members.

Overt Act No. 192: On April 8, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ agreed to contact unindicted co-conspirator 39 ("UICC-39") to tell co-conspirator Luis Garcia's stabbing victim, M.A., not to cooperate with law enforcement in exchange for being taken off the "Green Light" list.

Overt Act No. 193: On April 8, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ explained to co-conspirator Luis Garcia how to use the legal system to delay his trial in order to remain in LACJ as a facilitator.

Overt Act No. 194: On April 9, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ, via text-message, directed UICC-38 to send him $1,000 and UICC-39's phone number per the instructions of defendant LUIS GARCIA.

Overt Act No. 195: On April 23, 2014, via text-message, UICC-38 sent defendant GABRIEL ZENDEJAS-CHAVEZ a phone number for the national president of the Mongols outlaw motorcycle gang.

Overt Act No. 196: On June 25, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to meet with and pass messages to Mexican Mafia member 1, Mexican Mafia member 4, Mexican Mafia member 6, Mexican Mafia member 8, and Mexican Mafia member 10 at Pelican Bay State Prison.

E. Smuggling of Heroin and Methamphetamine into LACJ

Overt Act No. 239: From April 18, 2014, through April 20, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ, co-conspirators Donato Gonzales and Alvaro Ruiz, and unindicted co-conspirator Frank Herrera, arranged for heroin and methamphetamine to be smuggled into MCJ.

Overt Act No. 240: On April 22, 2014, unindicted co-conspirator Martin Salazar possessed and hid approximately 2.37 grams of heroin and 7.75 grams of methamphetamine that had been smuggled into LACJ by unindicted co-conspirator Ramon Amaya on behalf of the Mexican Mafia LACJ Enterprise.

Overt Act No. 241: Between April 25, 2014, and May 9, 2014, co-conspirator Donato Gonzales wrote a kite to co-conspirator Luis Garcia that the "legal team" had sent drugs to co-conspirator Donato Gonzales and asked co-conspirator Luis Garcia to look out for those drugs.

Overt Act No. 242: On June 2, 2014, co-conspirator Donato Gonzales wrote a coded letter, disguised as legal mail, to defendant GABRIEL ZENDEJAS-CHAVEZ stating that he had not received the heroin and methamphetamine.

F. Defendant GABRIEL ZENDEJAS-CHAVEZ Uses His Status as an Attorney to Pass Mexican Mafia Orders Regarding Assaults, Murder, and Drug Trafficking

Overt Act No. 243: On April 22, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to meet with co-

conspirator Luis Garcia and pass an order that "Dreamer" from the 18th Street gang, "Demon" from 18th Street gang, and "Blanco" from the VNE gang be assaulted or killed, pass messages from Mexican Mafia members at the ADX Florence federal prison, discuss other Mexican Mafia business including obtaining drugs from Mexican drug cartels, and report that he would be travelling to Mexico to work on an alliance with a drug cartel.

Overt Act No. 244: Between May 5, 2014, and May 11, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ travelled to Mexico.

G. Between May 5, 2014, and May 11, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ travelled to Mexico. Defendant GABRIEL ZENDEJAS-CHAVEZ Used his Status to Pass Mexican Mafia Messages to JOSE LANDA-RODRIGUEZ

Overt Act No. 245: On April 22, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to meet with defendant JOSE LANDA-RODRIGUEZ and pass a message from Mexican Mafia member 11 that Federal Mexican Mafia members would not be recognizing three State Mexican Mafia members as brothers.

Overt Act No. 246: On April 22, 2014, during his meeting with defendant JOSE LANDA-RODRIGUEZ, defendant GABRIEL ZENDEJAS-CHAVEZ passed a message from DMM-2 about removing A.E. from Mexican Mafia membership.

Overt Act No. 247: Between April 22, 2014, and April 25, 2014, defendant JOSE LANDA-RODRIGUEZ passed a message to co-conspirator Donato Gonzales to confirm that A.E. was being removed from Mexican Mafia membership.

Overt Act No. 248: From April 25, 2014, through May 9, 2014, defendant JOSE LANDA-RODRIGUEZ directed co-conspirator Luis Garcia to have defendant GABRIEL ZENDEJAS-CHAVEZ use his status as an attorney

to obtain documentation that a Mexican Mafia associate was cooperating with law enforcement to justify the murder of that Mexican Mafia associate.

H. Defendant GABRIEL ZENDEJAS-CHAVEZ Uses His Status as an Attorney to Discuss Mexican Mafia Business

Overt Act No. 251: On April 28, 2014, and May 5, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to meet separately with defendant JOSE LANDA-RODRIGUEZ and co-conspirators Luis Garcia and Donato Gonzales, and at LACJ.

Overt Act No. 252: On April 28, 2014, and May 5, 2014, in meetings at LACJ, defendant GABRIEL ZENDEJAS-CHAVEZ informed co-conspirator Luis Garcia: that Federal Mexican Mafia members at the ADX Florence federal prison had not voted for Mexican Mafia membership for "Psycho"; that Mexican Mafia member 11 had placed "Wolf" in charge of the 18th Street gang; that Mexican Mafia member 9 had advised that Deceased Mexican Mafia members 3 and 4 were feuding, and to not get dragged into the feud; and to hold off on the assaults of "Dreamer" from the 18th Street gang, "Demon" from 18th Street gang, and "Blanco" from the VNE gang, that they had previously discussed.

I. Defendant GABRIEL ZENDEJAS-CHAVEZ Informs Others that Luis Garcia had Dropped Out of the Mexican Mafia

Overt Act No. 257: On May 28, 2014, in a recorded telephone call, defendants GABRIEL ZENDEJAS-CHAVEZ and JOSE LANDA-RODRIGUEZ discussed the fact that co-conspirator Luis Garcia had "dropped-out" of the Mexican Mafia and should not be included in Mexican Mafia business any longer.

Overt Act No. 258: From May 28, 2014, through at least May 30, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ informed other co-conspirators that co-conspirator Luis Garcia had "dropped-out" of the Mexican Mafia.

Overt Act No. 259: Between May 18, 2014, and July 16, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ wrote, in correspondence disguised as legal mail, to Mexican Mafia member 12 at Pelican Bay State Prison that co-conspirator Luis Garcia had "dropped-out" of the Mexican Mafia.

J. Directions to Send Mexican Mafia LACJ Enterprise Business and Proceeds Through Defendant GABRIEL ZENDEJAS-CHAVEZ

Overt Act No. 260: On August 30, 2014, unindicted co-conspirator 43 ("UICC-43") possessed a kite written by another unknown co-conspirator directing that Mexican Mafia LACJ Enterprise proceeds from drug sales in LACJ and kitty money from LACJ should be sent to defendant GABRIEL ZENDEJAS-CHAVEZ and directing that co-conspirator Ernesto Vargas be recognized as having the authority to run NCCF.

K. Conspiracy to Remove Mexican Mafia Member A.E. From Power and to Take Over His Territories

Overt Act No. 290: On or before April 25, 2014, defendant JOSE LANDA-RODRIGUEZ wrote a kite to co-conspirator Donato Gonzales to inform him that defendant JOSE LANDA-RODRIGUEZ, DMM-2, and other Mexican Mafia members intended to strip Mexican Mafia membership from A.E.

Overt Act No. 291: On or before April 25, 2014, defendant JOSE LANDA-RODRIGUEZ wrote a kite to co-conspirator Luis Garcia to inform

him that defendant JOSE LANDA-RODRIGUEZ, DMM-2, and other Mexican Mafia members intended to strip Mexican Mafia membership from A.E.

Overt Act No. 292: On or before April 25, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ passed a message from DMM-2 to defendant JOSE LANDA-RODRIGUEZ regarding the decision to strip Mexican Mafia membership from A.E.

Overt Act No. 293: On June 30, 2014, in a recorded telephone conversation, defendant JOSE LANDA-RODRIGUEZ and unindicted co-conspirator 45 ("UICC-44") discussed threatening the life of D.C. because of his alignment with Mexican Mafia member A.E. and his collecting of taxes in areas controlled by defendant JOSE LANDA-RODRIGUEZ.

Overt Act No. 294: In or around August 2014, defendants GABRIEL ZENDEJAS-CHAVEZ and RAFAEL LEMUS, and co-conspirators Ernesto Vargas and Miguel Rodriguez met at defendant GABRIEL ZENDEJAS-CHAVEZ's law office and discussed A.E. being removed from the Mexican Mafia and other members taking over his territories.

Overt Act No. 295: On September 14, 2014, an unknown co-conspirator killed D.C. because of his alignment with A.E. and his collection of taxes in areas controlled by defendant JOSE LANDA-RODRIGUEZ.

Overt Act No. 296: On October 22, 2014, co-conspirator Miguel Rodriguez passed a message to defendant JOSE LANDA-RODRIGUEZ from defendant RAFAEL LEMUS that Mexican Mafia members were in agreement about stripping A.E. of his membership and taking over his territories.

Overt Act No. 297: On November 11, 2014, an unknown co-conspirator killed G.E. because of his alignment with A.E.

L. Defendant GABRIEL ZENDEJAS-CHAVEZ Used His Status as an Attorney to Pass Messages About Mexican Mafia Business

Overt Act No. 298: On September 2, 2014, September 3, 2014, and October 1, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ used his status as an attorney to visit ten Mexican Mafia members at Pelican Bay State Prison, including Mexican Mafia member 4, and pass messages about new Mexican Mafia members and about the identity of possible cooperators.

Overt Act No. 299: Between October 1, 2014, and October 22, 2014, after visiting Pelican Bay State Prison, defendant GABRIEL ZENDEJAS-CHAVEZ reported to defendant RAFAEL LEMUS and co-conspirator Miguel Rodriguez that: defendant GABRIEL ZENDEJAS-CHAVEZ had found paperwork that co-conspirator Luis Garcia, unindicted co-conspirator 45 ("UICC-45"), and UICC-38 were cooperating with law enforcement; Mexican Mafia Member 4 confirmed that "Cartoon" from the Canta Ranas gang was now a Mexican Mafia member; and A.E. had been stripped of his territories.

Overt Act No. 300: On or before October 22, 2014, co-conspirator Miguel Rodriguez wrote a kite at the direction of DMM-2's secretary, defendant RAFAEL LEMUS, stating that defendant GABRIEL ZENDEJAS-CHAVEZ had found paperwork that co-conspirator Luis Garcia, UICC-38, and UICC-45 were cooperating with law enforcement, that "Cartoon" from the Canta Ranas gang was now an Eme member, that A.E. had been stripped of his territories, and that the accompanying drugs belonged to DMM-2 and Mexican Mafia member 13.

M. Smuggling of Heroin and Mexican Mafia LACJ Enterprise Correspondence into LACJ

Overt Act No. 301: On or before October 21, 2014, co-conspirator Miguel Rodriguez directed unindicted co-conspirator Marco Meza to smuggle drugs and a kite into LACJ on behalf of DMM-2.

Overt Act No. 302: On October 22, 2014, at the direction of co-conspirator Miguel Rodriguez, unindicted co-conspirator Marco Meza smuggled approximately 18.82 grams of heroin into LACJ on behalf of the Mexican Mafia.

Overt Act No. 303: On October 22, 2014, unindicted co-conspirator Marco Meza possessed a kite from co-conspirator Miguel Rodriguez to defendant JOSE LANDA-RODRIGUEZ discussing Mexican Mafia LACJ Enterprise business, including the identity of potential cooperators as determined by defendant GABRIEL ZENDEJAS-CHAVEZ, the identity of a new Mexican Mafia member, and the standing of other Mexican Mafia members.

N. Attorney GABRIEL ZENDEJAS-CHAVEZ Passes Mexican Mafia Messages

Overt Act No. 307: On October 30, 2014, defendant GABRIEL ZENDEJAS-CHAVEZ visited Mexican Mafia member 11 at the ADX Florence federal prison in Colorado and showed secret messages to Mexican Mafia member 11.

O. Defendant RAFAEL LEMUS Assists DMM-2 in Running Mexican Mafia LACJ Enterprise Business, Including Drug Trafficking and Extortion

Overt Act No. 323: Beginning in or prior to February 2014, and continuing until at least May 2015, defendant RAFAEL LEMUS assisted DMM-2 in running Mexican Mafia LACJ Enterprise business. Defendant RAFAEL LEMUS assisted in obtaining drugs from Mexico and passed

messages from DMM-2 to others including to and from defendant GABRIEL ZENDEJAS-CHAVEZ.